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Supreme Court of the United States

OCTOBER TERM, 1956

No. 744

FRIENDLY SOCIETY OF ENGRAVERS AND SKETCHMAKERS, PETITIONER,

versus

CALICO ENGRAVING COMPANY, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The petitioner prays that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the Fourth Circuit, dated and entered in this case on November 7, 1956.

OPINIONS BELOW

The opinion of the District Court is not reported. The opinion of the Court of Appeals is reported in 228 F. (2d) 521.

JURISDICTION

The decision of the Court of Appeals for the Fourth Circuit was filed on November 7, 1956. The jurisdiction of this Court is invoked under the provisions of 28 U. S. C., Section 1254.

QUESTION PRESENTED

Does the Labor Management Relations Act of 1947 preclude the maintenance of an action in the United States District Court by a labor society against an employer to recover damages in tort under the common law of South Carolina for malicious and willful interference with its relationships and contracts with its members?

CONSTITUTIONAL PROVISION INVOLVED

U. S. Constitution, Amendment VII.

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of common law".

STATEMENT OF THE CASE

This action was commenced by petitioner, Friendly Society of Engravers and Sketchmakers against the respondent, Calico Engraving Company, in the United States District Court for the Eastern District of South Carolina on October 18, 1955.

Petitioner is a labor society organized as a corporation under the laws of the state of Rhode Island. The complaint states two causes of action, the first being predicated upon the theory that the respondent, by its tortious conduct, willfully and maliciously interferred with petitioner's relationships and contracts with its members who were in the employ of respondent, with resulting damages to peti-

tioner. The second cause is brought upon the theory that respondent interferred with petitioner's members in the exercise of their right to work in violation of the Right to Work Act of the State of South Carolina. Petitioner does not challenge the decision of the Court below as to its second cause of action.

Respondent moved in the District Court to dismiss the complaint upon jurisdictional grounds and upon the further ground that the complaint fails to state a claim upon which relief can be granted. The District Court granted respondent's motion upon the latter ground and dismissed the complaint. Upon appeal, the Court of Appeals for the Fourth Circuit held that petitioner's exclusive remedy was under the Labor Management Relations Act, and affirmed the Judgment of the District Court.

REASONS FOR GRANTING THE WRIT

1. The decision herein is not in accord with applicable decisions of this Court and with applicable local decisions. This case presents an important question as to the conflict between state and federal jurisdictions in the enforcement of common law rights and the administration of the Labor Management Relations Act. This Court has often recognized the importance of resolving federal and state conflicts in the delicate field of labor relations, and the jurisdictional issue has many times been made the basis for granting writs of certiorari. *Weber v. Anheuser Busch, Inc.*, 348 U. S. 468; *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656; *United Automobile Workers v. Wisconsin Employment Relations Board*, 351 U. S. 266. In the *Weber* case, where numerous decisions respecting labor relations are reviewed, this Court, speaking through Justice Frankfurter, stated, "The Labor Management Relations Act leaves much to the states, though Congress has refrained from telling us how much. This

penumbral area can be rendered progressively clear only by the course of litigation."

The decision of the Court below, in restricting petitioner to the administrative remedy provided under the Labor Management Relations Act, is directly in conflict with the *Laburnum case, supra,* which clearly sanctions the maintenance of an action at law for the recovery of damages on account of a common law tort. Certiorari was granted in that case for the sole purpose of determining whether a State Court was precluded from hearing the issues in a common law tort action based upon conduct which constituted unfair labor practices. The clear and unequivocal language of that opinion unquestionably resolves the conflict in favor of an action at law where the Federal Act provides no remedy for the recovery of damages for tortious conduct. We quote therefrom as follows:

> "Petitioners contend that the Act of 1947 has occupied the labor relations field so completely that no regulatory agency other than the National Labor Relations Board and no court may assert jurisdiction over unfair labor practices as defined by it, unless expressly authorized by Congress to do so. They claim that state courts accordingly are excluded not only from enjoining future unfair labor practices and thus colliding with the Board, as occurred in *Garner v. Teamsters C. & H. Local Union,* 346 U. S. 485, 98 L. Ed. 228, 74 S. Ct. 161, but that state courts are excluded also from entertaining common-law tort actions for the recovery of damages caused by such conduct. The latter exclusion is the issue here. In the *Garner case,* Congress had provided a federal administrative remedy, supplemented by judicial procedure for its enforcement, with which the state injunctive procedure conflicted. Here Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct. For us to cut off the injured respondent from this right of recovery will deprive it of its property without

recourse or compensation. To do so will, in effect, grant petitioners immunity from liability for their tortious conduct. We see no substantial reason for reaching such a result. The contrary view is consistent with the language of the Act and there is positive support for it in our decisions and in the legislative history of the Act."

The opinion of the court below would restrict the application of *Laburnum* merely to a tort such as assault and battery, a limitation that is unwarranted from the facts presented and the principles therein enunciated. The delicit in *Laburnum* consisted of a disruption of the construction firm's business relationships through threats and intimidation of its employees by the union, conduct which admittedly constituted unfair labor practices. The clear language of the opinion undoubtedly sanctions the bringing of an action at law to recover damages for conduct constituting a common law tort, regardless of the nature of the tortious conduct involved.

It is to be noted that the issue below was raised on motion of respondent to dismiss the complaint for failure to state a claim. Contrary to the established law that the complaint must be viewed in the light most favorable to the plaintiff with every intendment in his favor, the court below adopted a narrow construction and rejected the complaint as failing to state an action under the common law. The theory of petitioner's first cause of action is that respondent through willful and malicious conduct wrongfully interferred with petitioner's relationships and contracts with its members and is amply supported under the doctrine of *Lumley v. Gye,* 2 El. and Bl 216, 118 Eng. Rep. 749; and the South Carolina cases of *Chitwood v. McMillan,* 189 S. C. 262, 1 S. E. (2d) 162; and *Keels v. Powell,* 207 S. C. 97, 34 S. E. (2d) 482. The pertinent allegations of this cause which support petitioner's theory may be summar-

ized as follows: (1) The organization of petitioner as a labor union (2) the employment by respondent of petitioner's members in various capacities in its plant (3) the recognition of petitioner by the N. L. R. B. as the sole bargaining representative of the employees in respondent's plant (4) the willful and malicious interference by respondent with petitioner's contracts and relationships with its members (5) the statements of respondent that it wanted petitioner to leave the plant and its employees to leave the society (6) the threats and promises to the members to compel them to terminate their membership in the union and to expel petitioner from said plant.

As a consequence of the foregoing actions on the part of the respondent, its agents and servants, the complaint further alleges that the said employees became insecure in their employment, were compelled to resign, and lost their membership in the society, as a result of which petitioner lost its recognition as sole bargaining representative of the employees in respondents plant, lost numerous members, was deprived of membership dues and other benefits accruing from its membership, suffered extreme humiliation and loss of prestige as a labor organization, all of which resulted in damages to petitioner.

The fallacy of the decision of the court below lies in its assumption that the conduct of the employer, as characterized in the complaint, does not fall within the ambit of the cases permitting a recovery for malicious interference with contractual relations. No authority was cited for the court's holding that a union was remediless under the common law where an employer sought willfully and maliciously to harm it in its relationships with its members. *Hitchman Coal Company v. Mitchell,* 245 U. S. 229, relied upon by the Court below, dealt with the right of an employer to require of its employees that they not join a union as a condition of employment and is not apposite. In

fact, *Hitchman* recognized that a court would properly enjoin interference with a contractual relationship by a third party, which in that instance was an employer's relationship with its employees. A logical corollary from this conclusion would be that a labor society would have a cause of action against an employer charged with perpetrating a tort of like nature against it. The Court below failed to recognize that petitioner's action is fully supported under numerous decisions of the State of South Carolina reaffirming the common law rule on this subject. *Chitwood v. McMillan, supra; Keels v. Powell, supra.* The remedy provided under the Federal Act for enjoining unfair labor practices does not preclude the maintenance of a well established action under the common law to recover monetary damages.

An important jurisdictional issue as between state and federal supremacy in an area where parallel remedies were provided under both the federal and state Acts was resolved in favor of state action in the recent case of *United Automobile Workers v. Wisconsin Employment Relations Board, supra,* where the state agency was permitted to enjoin conduct which was also subject to an unfair labor proceeding before the Federal Board. The recognition of the propriety of state action in that case would dictate a like conclusion in the case at bar.

2. **The decision of the Court below is in conflict with International Union, U. A. W. v. Russell, 88 So. (2d) 175, certiorari granted November 19, 1956.** A well reasoned decision based upon the holding in *Laburnum* is *International Union v. Russell, supra,* in which this Court recently granted certiorari (case No. 427, November 19, 1956). The complaint proceeds upon a like theory of unwarranted interference with contractual rights, in charging that the union unlawfully and maliciously prevented plaintiff from

engaging in his employment with resulting loss of wages to him. The Supreme Court of Alabama held that the Federal Act did not deprive a State Court of power to entertain an action brought by a non-striker against the union for recovery of damages caused by union agents malicious acts of violence and threats of personal injury which prevented him from working, even if these acts and threats constituted unfair labor practices under the Act. The legal basis upon which plaintiff's action rested was summarized in the following language of the opinion: "This Court recognizes that the right to pursue a lawful occupation is a property right and the wrongful interference therewith is an actionable wrong."

We respectfully submit that the considerations meriting the granting of certiorari in that case would apply with equal force to the action herein. The issue presented appears to be identical—Does the Federal Act so pre-empt the field as to preclude the maintenance of a common law tort action for damages where the conduct complained of also constitutes unfair labor practices? The desirability of clarifying the law in this broad area of increasing litigation would dictate the propriety of a review of the action of the Court below in this case. The question is of extreme importance in the administration of the Labor Management Relations Act and the assertion of common law rights generally. A thorough airing of this question in all of its phases can best be accomplished by permitting the argument of this case simultaneously with *Russell*.

3. **The action of the Court below deprives petitioner of its right to trial by jury, contrary to the Seventh Amendment to the United States Constitution.** As has been noted, the case herein has not been heard on its merits. The issue below was presented solely on the pleadings. Contrary to the rule of liberal interpretation where a complaint is at-

tacked for insufficiency, the Court below dismissed the action without giving petitioner an opportunity to be heard. This has resulted in a deprivation of petitioner's rights without recourse or compensation and in effect has granted respondent immunity from liability for its tortious conduct. Moreover, petitioner has been deprived of a fundamental right to trial by jury secured by the Seventh Amendment to the Constitution of the United States. The succinct language of this Court in *Jacobs v. City of New York,* 315 U. S. 752, recognizes the importance of safeguarding this right to a litigant:

> "The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of Federal jurisprudence which is protected by the Seventh Amendment. A right so fundamental and sacred to the citizen, whether guaranteed by the Constitution or provided by statute, should be zealously guarded by the Courts."

CONCLUSION

For the foregoing reasons, we respectfully submit that this Court should grant this petition for a writ of certiorari and reverse the judgment of the Court below.

Respectfully submitted,

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DECISION OF COURT OF APPEALS

(Argued October 5, 1956. Decided November 7, 1956.)

Before PARKER, Chief Judge, SOBELOFF, Circuit Judge, and BRYAN, District Judge.

Isadore S. Bernstein and Carl F. Nitto for Appellant and N. Heyward Clarkson, Jr., and Thomas C. Bradley, Jr., (Smith & Bradley on brief) for Appellee.

PARKER, Chief Judge:

This is an appeal from an order dismissing an action instituted by a labor union against an employer to recover damages on account of ant-union activity on the part of the employer. The dismissal was based upon the failure of the complaint to state a claim upon which relief could be granted.

The complaint sets forth two causes of action. The first alleges that plaintiff is an incorporated labor union, a number of whose members have been employed by defendant, a manufacturing corporation, and that plaintiff has been certified as the sole bargaining representative of the employees of the defendant. The gist of the claim for damages is contained in paragraphs 6 and 7 of the first cause of action which are as follows:

> "6. That since the certification by the plaintiff as the sole bargaining representative of its employees in the defendant's plant as aforesaid, the defendant, its agents and officers, have wilfully and maliciously interfered with the plaintiff's contracts and relationships with its members employed by defendant and have on numerous occasions stated to the said employees that they wanted the union to leave the plant and that they would prefer that the employees leave the union, and have made numerous threats and promises to the said members in an effort to compel them to terminate their membership in the union and to expel the plaintiff from the plaintiff as the sole bargaining representative of its the said plant, and have failed and refused to recognize employees in the defendant's plant pursuant to the said

certification by the National Labor Relations Board; that the acts aforesaid were in violation of plaintiff's rights as a labor union and constitute a wrongful and unlawful interference with the plaintiff in its relations and contracts with its members, and the same constitute unfair labor practices in violation of the Labor Management Relations Act of 1947.

"7. That by reason of and as a result of the aforesaid wilful and malicious acts and conduct of the defendant and unlawful interference with the plaintiff in its relations to its members, the said employees became insecure in their jobs and were compelled to resign from their employment and have lost, or are about to lose, their membership in the plaintiff society, as a result of which the plaintiff lost its recognition as the sole bargaining representative of the employees in the defendant's plant, lost numerous members and has suffered extreme humiliation and loss of prestige as a labor organization and has been deprived of membership dues and other benefits accruing from its membership and the plaintiff has been otherwise damaged, all to its damage in the sum of One Hundred Thousand ($100,000.00) Dollars actual and punitive damages."

The second cause of action alleges that defendant's actions constitute a violation of the right to work statute of the State of South Carolina. Sections 40-46 *et seq.* 1954 Supplement to the Code of Laws of South Carolina, which declares it to be the public policy of the state "that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization."

We agree with the court below that neither cause of action states a claim upon which plaintiff can recover. As to the first cause of action, plaintiff's contention is that it is entitled to recover for malicious interference with contract, under the doctrine of such cases as *Lumley v. Gye*, 2 El. and Bl. 216, 118 Eng. Rep. 749; *Chitwood v. McMillan*, 189 S. C. 262, 1 S. E. (2d) 162; and *Keels v. Powell*, 207 S. C. 97, 34 S. E. (2d) 482. We do not think, however, that the action of an employer in seeking to eliminate union membership on the part of his employees falls within the ambit of

these cases. Certainly there was no action at common law for such anti-union activity on the part of the employer, who might require of his employees as a condition of employment that they not be members of a labor union. See *Hitchman Coal & Coke Co. v. Mitchell,* 245 U. S. 229; *Coppage v. Kansas,* 236 U. S. 1; *Adair v. United States,* 208 U. S. 161. This was changed by the National Labor Relations Act amended by the Labor Management Relations Act. 29 USC 160 *et seq.,* which recognized the rights of laboring men to organize and to bargain collectively and made it the duty of the employer to recognize such rights and to bargain with the duly chosen representative of the employees. The National Labor Relations Act and the Labor Management Relations Act, however, provided exclusive remedies for the protection of the rights thus recognized; and the parties complaining of the violation of such rights may not go into court for their vindication but must pursue the remedies that the acts provide. *Amazon Cotton Mills v. Textile Workers Union of America,* 4 Cir. 167 F. (2d) 183. As said by this court in the case cited:

> "It is perfectly clear, both from the history of the National Labor Relations Act and from the decisions rendered thereunder, that the purpose of that act was 'to establish a single paramount administrative or quaso-judicial authority in connection with the development of federal American Law regarding collective bargaining'; that the only rights made enforceable by the act were those determined by the National Labor Relations Board to exist under the facts of each case; and that the federal trial courts were without jurisdiction to redress by injunction or otherwise the unfair labor practices which it defined. H. Rep. No. 447, 74th Cong. 1st Sess. p. 24; S. Rep. No. 573, 74th Cong. 1st Sess. p. 15; *Agwilines, Inc. v. N. L. R. B.,* 5 Cir., 87 F. (2d) 146, 150, 151; *Blankenship v. Kurfman,* 7 Cir. 96 F. (2d) 450; *Myers v. Bethlehem Shipbuilding Corp.,* 303 U. S. 41, 58 S. Ct. 459, 82 L. Ed. 638; *Newport News Shipbuilding & Dry Dock Co. v. Schauffler,* 303 U. S. 54, 58, 58 S. Ct. 466, 82 L. Ed. 646; *Amalgamated Utility Workers v. Consolidated Edison Co.,* 309 U. S. 261, 265, 266, 60 S. Ct. 561, 84 L. Ed. 738; *National*

Licorice Co. v. N. L. R. B., 309 U. S. 350, 362, 365, 60 S. Ct. 569, 84 L. Ed. 709. * * * For the same reason that plaintiff may not maintain the suit for injunction to restrain the unfair labor practice, it may not maintain the action to recover damages on account thereof."

In *Garner v. Teamster's Union*, 346 U. S. 485, the Supreme Court dealt with the granting of an injunction to restrain peaceful picketing in aid of an organizing effort by the union. In holding that the National Labor Relations Board had exclusive jurisdiction with respect to the matter and that the courts were without jurisdiction in the premises, the court said:

"Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pendng a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudges toward labor controversies. * * * A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or on application of the federal Board, precludes state courts from doing so."

In *Weber v. Anhauser-Busch, Inc.*, 348 U. S. 468, the Supreme Court held that a state court might not grant an injunction on the basis of state law to restrain certain unfair labor practices. In the course of the opinion the court said: "It is perfectly clear that had respondent gone first to a federal court instead of the state court, the federal court would have declined jurisdiction, at least as to the

unfair labor practices, on the ground that exclusive primary jurisdiction was in the Board. As pointed out in the *Garner case,* 346 U. S., at 491, the same considerations apply to the state courts." After distinguishing the case of *United Construction Workers v. Laburnum, infra,* and adverting to situations in which jurisdiction might properly be exercised by state tribunals, the court said: "But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance."

See also *Bowen v. Bricklayers, Masons & Plasterers Int. Union,* 225 S. C. 29, 80 S. E. (2d) 343, in which the Supreme Court of South Carolina said that the jurisdiction of the labor board would be exclusive in a case such as this where interstate commerce is involved.

Where Congress intended that a right to sue in the courts should exist with respect to any of the rights created by the act, it made express provision to that effect, as in the case of injuries resulting from boycotts or other unlawful combinations. See 29 USC 187(a) and (b), construed and applied by this court in *United Mine Workers of America v. Patton,* 211 F. (2d) 742

United Construction Workers v. Laburnum Construction Company, 347 U. S. 656, is not to the contrary. That case dealt with the right to recover damages on account of a common law tort actionable in the absence of statute, not a mere unfair labor practice with respect to which no action at common law existed. Of course tortious action such as assault and battery does not cease to be actionable because it may constitute an unfair labor practice; but it does not follow that an unfair labor practice is actionable at law because forbidden by statute. As pointed out above, where the statute which forbids it provides at the same time a remedy for its redress without providing a right of action in the courts, the remedy so provided is exclusive. To allow

actions at law to be maintained with respect to unfair labor practices, which do not give rise to actions at common law, would not only burden the courts with a flood of unnecessary litigation, but would hamper the National Labor Relations Board in the performance of the duties confided to it and would breed endless confusion in labor litigation. Nothing of the sort was intended by Congress; and for the courts to sanction such litigation would retard and not advance the purposes for which the National Labor Relations Act came into being.

For like reason, we think that the complaint states no claim upon which relief may be granted under the South Carolina "right to work" act. That statute was clearly intended to preserve the right of laboring men to employment notwithstanding closed shop agreements entered into between employers and labor unions, not to confer upon labor unions the right to recover damages from employers because of unfair labor practices. If, however, it be construed as attempting to confer such right upon labor unions, it is clear that the attempt must fail in cases such as this, where exclusive jurisdiction with respect to the conduct involved has been vested by Congress in the *National Labor Relations Board. Weber v. Anhauser-Busch, Inc., supra,* 348 U. S. 468; *Garner v. Teamsters Union, supra,* 346 U. S. 485.

Affirmed.

ORDER OF DISTRICT COURT

This is an action for damages brought by a labor union against the employer of some of its members. The part of the complaint designated as the first cause of action alleges that defendant, on numerous occasions, stated to its employees that it wanted plaintiff to leave its plant and preferred that its employees leave plaintiff, that it made threats and promises to its employees in an effort to cause their withdrawal from plaintiff, and refused to recognize plaintiff as the sole bargaining representative of its employees. The part of the complaint designated as the second cause of action alleges that defendant interferred with members of plaintiff in the exercise of their right to work. The damages claimed in each of the two designated causes

of action are the same, that defendant's complained of acts caused plaintiff to lose members, membership dues, prestige, and recognition as bargaining representative of defendant's employees.

I have for consideration defendant's motion to dismiss. I do not feel that it is necessary to consider all of the grounds urged, for in my opinion, the complaint quite clearly fails to state a claim upon which relief can be granted.

In the first cause of action, plaintiff does not rely upon any statute, State or Federal, but urges that defendant's acts as alleged are wrongful at common law in that they constitute a wrongful interference with plaintiff's contractual relationships with its members. The decisions cited in plaintiff's brief (*Keels v. Powell,* 207 S. C. 97, 34 S. E. (2d) 482, and *Chitwood v. McMillan,* 189 S. C. 262, 1 S. E. (2d) 162) do not support plaintiff's case. It would serve no useful purpose to discuss the many distinguishing features. It is sufficient to note that here the defendant has a legitimate business interest which it may protect by any lawful means. I am aware of no authority that characterizes the acts attributed to defendant as violative of any common law principle.

Plaintiff asserts that the second cause of action alleges a violation of a recently enacted South Carolina statute commonly known as the "Right To Work Act," Sections 40-46 *et seq.*, 1954 Supplement to the Code of Laws of South Carolina, 1952, the pertinent parts of which read as follows:

> Section 40-46.6. "**Interference with right to work; compelling labor organization membership; picketing; etc., unlawful.**
>
> "It shall be unlawful for any person, acting alone or in concert with one or more persons:
>
> "(1) By force, intimidation, violence or threats thereof, or violent or insulting language, directed against the person or property, or any member of the family of any person (a) to interfere, or attempt to interfere, with such person in the exercise of his right to work, to pursue or engage in any lawful vocation or business activity, to enter or leave any place of his

employment or to receive, ship or deliver materials, goods or services not prohibited by law, or (b) to compel or attempt to compel any person to join, support or refrain from joining or supporting any labor organization. * * *"

Section 40-46.7. **"Appeal to court when rights adversely affected.**

"Any person whose rights are adversely affected by any contract, agreement, assemblage or other act or thing done or threatened to be done and declared to be unlawful or prohibited by this chapter may apply to any court having general equity jurisdiction for appropriate relief."

Section 40-46.8. **"Same; relief court may grant.**

"The Court, in any such proceeding, may grant and issue such restraining, and other, orders as may be appropriate, including an injunction restraining and enjoining the performance, continuance, maintenance or commission of any such contract, agreement, assemblage, act or thing, and may determine and award, as justice may require, any actual damages, costs and attorneys' fees which have been sustained or incurred by any party to the action, and, in the discretion of the court or jury, punitive damages in addition to the actual damages."

The South Carolina Supreme Court has not yet had occasion to construe the Right To Work Act, but in my opinion, the Act as a whole clearly manifests the intention of the Legislature to protect individual employees. Where Section 40-46.7 employs the words, "Any person whose rights are adversely affected," the Legislature undoubtedly had in mind the purpose of protecting the right of every individual to seek and accept employment. The Act cannot be legitimately construed as one for the benefit of a labor organization to which an employee might belong. Otherwise, churches and other organizations to which an employee belonged and to which he customarily made contributions or paid dues might also have causes of action

against employers who refused to employ or threatened to discharge any person belonging to such church or other organization.

The action should be dismissed. It is so ORDERED.

This 30th day of March, 1956.

(Signed) GEO. BELL TIMMERMAN,
United States District Judge.

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JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1956

No. 744

FRIENDLY SOCIETY OF ENGRAVERS AND SKETCHMAKERS, PETITIONER,

versus

CALICO ENGRAVING COMPANY, RESPONDENT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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It is respectfully submitted that this Honorable Court should not entertain the petition herein for the following reasons:

1. The Court of Appeals properly held that the first cause of action did not state a claim upon which relief could be granted under the laws of the State of South Carolina and that if any cause of action was stated it was one arising under and by virtue of the Labor Management Relations Act of 1947, and thus within the exclusive jurisdiction of the National Labor Relations Board.

QUESTION PRESENTED

The respondent cannot agree with petitioner's statement of the question presented. In petitioner's view the sole question presented is whether or not the Labor Management Relations Act of 1947 precludes the maintenance of a common law tort action by a labor union against an employer in the United States District Court. Respondent believes that two questions are presented, namely: (1) Is a cause of action for common law tort stated?; (2) Is a cause of action for violation of the Labor Management Relations Act of 1947 within the exclusive jurisdiction of the National Labor Relations Board?

CONSTITUTIONAL PROVISION INVOLVED

U. S. Constitution, Amendment VII.

The respondent does not believe that this constitutional provision concerning the right of trial by jury is involved because if no cause of action is stated, there is nothing to be heard by the jury. Furthermore, offenses under the Labor Management Relations Act are declared by that Act to be triable by the National Labor Relations Board.

STATEMENT OF THE CASE

The respondent agrees with the statement of the case by petitioner. It invites attention to the fact that the District Court held that no cause of action was stated upon which relief could be granted, as to either cause of action set forth in the complaint. Petitioner does not appeal from the decision of the Court below as to its second cause of action. The alleged first cause of action as set forth in petitioner's complaint, the basis for petitioner's writ of certiorari, is set forth in the appendix hereto.

ARGUMENT

The petitioner divides its argument for the granting of the Writ into three parts. We shall answer these arguments *seriatim*.

Petitioner's cause of action is purportedly for an alleged common law tort under the laws of the State of South Carolina. Under the common law of South Carolina it is not a tort for an employer to be concerned with the activities of its employees, nor is it a common law wrong to even go so far as to make non-union membership a condition of employment. It is, therefore, obviously no common law wrong to persuade an employee not to be a member of a union, or to discharge for any cause whatsoever. Am. Jur., Vol. 31, pages 837, 838 and 1103. The common law rule has been recognized by the Supreme Court of the State of South Carolina in *Parker v. Southeastern Haulers, Inc.*, 210 S. C. 18, 41 S. E. (2d) 387, wherein the Court makes the following statement:

> "This decision does not affect the established law of this state, which is the common law, that ordinarily an employee under contract for employment of indefinite duration may quit his job at will and, as a correlative right of the employer, the latter may discharge the employee without cause (and without duty to furnish him any explanation, recommendation or what not.) *Shealy v. Fowler*, 182 S. C. 81, 188 S. E. 499. See also 39 C. J., 71, 90, 31, Am. Jur. 1103; and 35 *Id.* 469."

An employer has a definite interest in the relationship between a union and its employees and under common law may seek to influence that relationship in a lawful manner. The Court below recognized this right in the following words:

> "We agree with the court below that neither cause of action states a claim upon which plaintiff can recover. As to the first cause of action, plaintiff's contention is that it is entitled to recover for malicious in-

terference with contract, under the doctrine of such cases as *Lumley v. Gye*, 2 El. and BL, 216, 118 Eng. Rep. 749; *Chitwood v. McMillan*, 189 S. C. 262, 1 S. E. (2d) 162; and *Keels v. Powell*, 207 S. C. 97, 34 S. E. (2d) 482. We do not think, however, that the action of an employer in seeking to eliminate union membership on the part of his employees falls within the ambit of these cases. Certainly there was no action at common law for such anti-union activity on the part of the employer, who might require of his employees as a condition of employment that they not be members of a labor union. See *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229; *Coppage v. Kansas*, 236 U. S. 1; *Adair v. United States*, 208 U. S. 161."

Petitioner attempts to bring the instant case within the doctrine of *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656. In that case members of a union, in no way connected with the employer or his employees, assaulted employees of the employing company. The assault was clearly a common law tort consisting of physical violence and threats committed by strangers to the contracting parties. It is, therefore, inapposite. There is no common law tort in the instant case. Here the employer is simply charged with an alleged unfair labor practice, governed solely by statute. As the Court below, in referring to the *Laburnum case, supra*, said:

"That case dealt with the right to recover damages on account of a common law tort actionable in the absence of statute, not a mere unfair labor practice with respect to which no action at common law existed. Of course tortious action such as assault and battery does not cease to be actionable because it may constitute an unfair labor practice; but it does not follow that an unfair labor practice is actionable at law because forbidden by statute. As pointed out above, where the statute which forbids it provides at the same time a remedy for its redress without providing a right of

action in the courts, the remedy so provided is exclusive."

Respondent further argues that the decision of the Court below is in conflict with *International Union, U. A. W. v. Russell*, 88 So. (2d) 175, certiorari granted November 19, 1956. With this we cannot agree. That case is inapplicable as the facts there are substantially different from the one before the Court.

In that case there was a strike and resultant picketing by the union against the employer of respondent Russell. Russell attempted to cross the picket line in going to work and as he drove his car toward the plant entrance a large number of pickets blocked the street leading to the entrance. The pickets surrounded Russell's car and shouted threats to turn the car over. Other threats were shouted by the pickets. Russell was thereby prevented from going to work and pursuing his lawful and gainful occupation. The Supreme Court of Alabama held it had jurisdiction under the state's police power for malicious acts of violence and threats of personal injury. The case also involved serious questions of evidence. The instant case involves no such threats or actual violence or threats of personal injury and none is alleged, nor, as shown, does it involve any other common law tort.

Inasmuch as no common law tort existed upon which relief could be granted and the alleged acts of respondent being, if anything, merely unfair labor practices, the provisions of the Labor Management Relations Act, 1947, are controlling. Since that Act Proscribes and makes unlawful the commission of labor practices not otherwise illegal, the remedy therein provided is also controlling. Thus, the National Labor Relations Board, created by the Act, has exclusive original jurisdiction to determine issues arising out of alleged unfair labor practices and provide remedy there-

for. *Anson v. Hiram Walker*, 222 F. (2d) 100 (C. C. A. 7), Cert. Denied 350 U. S. 840; *U. E. Radio and Machine Workers v. General Electric Co.*, 231 F. (2d) 259; Cert. Denied 352 U. S. 850. To hold otherwise would destroy the function of the National Labor Relations Board insofar as unfair labor practices are concerned.

Additionally, the complaint specifically alleges the commission of unfair labor practices in violation of the Labor Management Relations Act, 1947. This Court has stated that where the moving party itself alleges unfair labor practices the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance. *Weber v. Anhauser Busch, Inc.*, 348 U. S. 468, 481. Thus, petitioner has, by its pleading alone, invoked the jurisdiction of the National Labor Relations Board.

The third part of petitioner's argument deals with the right to a trial by jury. This argument we believe to be specious. It is fundamental that a party is entitled to a trial by jury of a common law tort action. But if it be found that no common law tort is stated, then there is nothing for a jury to try. Thus, the litigant cannot be said to be deprived of a jury trial when there is nothing for a jury to determine.

If the cause of action be construed to state a claim for a violation of the Labor Management Relations Act of 1947 the argument herein made with reference to the exclusive jurisdiction of the National Labor Relations Board is applicable. The Act creating the alleged wrong of unfair labor practice provided that the issue thereof should be tried by the National Labor Relations Board. The wrong being a creature of statute, the statute can provide the method of determining the factual situation without a violation of the constitutional provision for trial by jury.

CONCLUSION

For the reasons herein set forth it clearly appears the law was correctly applied to the facts of this case by the Court below and accordingly the petition for a writ of *certiorari* should be denied.

Respectfully submitted,

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First Cause of Action in Complaint 11

COMPLAINT

Plaintiff above named, complaining of and against the above named defendant alleges:

For a First Cause of Action

1. That the plaintiff is a labor union duly organized as a corporation under and by virtue of the laws of the State of Rhode Island.

2. That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of South Carolina and having its principal place of business in West Columbia, South Carolina, where it is engaged in textile engraving.

3. That the matter in controversy herein, exclusive of interest and costs exceeds the sum of Three Thousand ($3,000.00) Dollars.

4. That for some time prior to the date hereof, the defendant employed a number of the members of the plaintiff society in various capacities at its plant at West Columbia, South Carolina and the plaintiff and the defendant entered into one or more contracts outlining and defining the methods and operations of the defendant and the terms and conditions relative to the employment of members of the plaintiff society by the defendant, reference to the same being hereby craved as often as may be necessary.

5. That the plaintiff has heretofore been duly certified by the National Labor Relations Board as the sole bargaining representative of all of the employees employed in various capacities by the defendant and the defendant has agreed to recognize the Society as the sole bargaining representative of such employees in accordance with certification by the National Labor Relations Board.

6. That since the certification by the plaintiff as the sole bargaining representative of its employees in the defendant's plant as aforesaid, the defendant, its agents and officers, have willfully and maliciously interfered with the plaintiff's contracts and relationships with its members employed by defendant and have on numerous occasions stated to the said employees that they wanted the Union to leave the plant and that they would prefer that the employees

leave the Union, and have made numerous threats and promises to the said members in an effort to compel them to terminate their membership in the Union and to expel the plaintiff from the said plant, and have failed and refused to recognize the plaintiff as the sole bargaining representative of its employees in the defendant's plant pursuant to the said certification by the National Labor Relations Board; that the acts aforesaid were in violation of plaintiff's rights as a labor union and constitute a wrongful and unlawful interference with the plaintiff in its relations and contracts with its members, and the same constitute unfair labor practices in violation of the Labor Management Relations Act of 1947.

7. That by reason of and as a result of the aforesaid willful and malicious acts and conduct of the defendant and unlawful interference with the plaintiff in its relations to its members, the said employees became insecure in their jobs and were compelled to resign from their employment and have lost, or are about to lose, their membership in the plaintiff Society, as a result of which the plaintiff lost its recognition as the sole bargaining representative of the employees in the defendant's plant, lost numerous members and has suffered extreme humiliation and loss of prestige as a labor organization and has been deprived of membership dues and other benefits accruing from its membership and the plaintiff has been otherwise damaged, all to its damage in the sum of One Hundred Thousand ($100,000.00) Dollars, actual and punitive damages.